

REMARKS

Claims 1, 4-5, 7-18, 20-25, 28-29, 31-41, 43-48, 51-52, and 54-58 remain in this application with claims 1, 25, and 48 in independent form. Claims 2-3, 6, 19, 26-27, 30, 42, 49-50, 53, and 59-61 have been cancelled and claim 1 has been amended.

Applicant appreciates the telephonic interview conducted with Examiner Cooney on December 5, 2006. Even though an agreement was not reached, the substance of the discussion is incorporated into the subject amendment.

Applicant submits herewith a petition for a one month extension of time and the associated fee to extend the period of reply to December 10, 2006, which is a Sunday and thus the reply is being filed timely.

The Examiner has objected to the specification, specifically paragraph [0030]. Applicant has amended paragraph [0030] and the objection is moot. Claims 59-61 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has cancelled claims 59-61 and the §112 rejection is moot.

Claims 48, 51, 52, 54-58 and 61 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner contends that the specification does not provide for the claim limitation “adjusting the amount of chain extender to provide the foam with a glass transition temperature of from 5 to 65 degrees Celsius.”

Applicant respectfully directs the Examiner’s attention to paragraph [0037] of the specification as originally filed, wherein it states:

The foam formed from the composition according to the subject invention has a glass transition temperature of from *5 to 65 degrees Celsius* and a tan delta peak of from 0.40 to 1.75, as will be described more fully below. As

previously described, *the amount of the chain extender present in the composition effects the temperature* at which the glass transition occurs and also effects the tan delta peak of the foam. [emphasis added]

Further, in paragraph [0032] of the specification as originally filed, it states:

The chain extender increases the glass transition temperature (T_g) of the foam. The chain extender and the isocyanate component react to form urethane hard segments within the foam that are incorporated into the soft segment phase and raise the soft segment T_g. This allows adjustment of T_g over a wide range of temperatures, independent of a density of the foam, which was not previously possible. *The subject invention provides flexibility to produce foams with a wide range of T_g's, by adjusting the chain extender level.* [emphasis added]

In view of the foregoing, the §112 rejection is improper and must withdrawn.

Claims 1, 4, 5, 7-18, 20-24 and 59 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, there was insufficient antecedent basis for “said glass transition temperature”. Applicant has amended claim to recite “a glass transition temperature” and the §112 rejection is overcome.

Claims 1, 4, 5, 7-18, 20-25, 28, 29, 31-41, 43-48, 51, 52 and 54-61 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hager et al. (6,391,935), as being unpatentable over Lutter et al. (5,420,170), and as being unpatentable over Bleys (5,968,993).

Applicant requests the Examiner to reconsider the detailed and lengthy arguments (15 pages) set forth in the Response dated May 30, 2006 as well the Declaration from Mr. Raymond Neff. Specifically, in the Office Action dated August 10, 2006, the Examiner contends that the Declaration did not provide a definitive and factually supported showing

of new or unexpected results. The Examiner continued that the results must compare to the closest prior art, that the results must be unexpected, and that the claims must be commensurate with the showings.

However, the Examiner fails to indicate how the Declaration was insufficient beyond merely reciting rhetoric. For example, the Declaration compared foams made in accordance with the claimed composition to foams made in accordance with Lutter et al. and in accordance with Hager et al. Both of these references were cited by the Examiner. Presumably, Lutter et al. and Hager et al. are the closest prior art, since the Examiner has based his rejection on these references. If the Examiner is aware of other, more relevant prior art, Applicant would appreciate such identification. In the absence of such other prior art, the Declaration is believed to satisfy the requirements expressed by the Examiner.

Referring to unexpected results, Mr. Raymond Neff, a Ph.D Chemical Engineer, who has worked in polyurethane chemistry for 15 years, stated in paragraph 6 that even though lower amounts of chain extenders are known, the resultant effects on the glass transition temperature of the viscoelastic polyurethane foam when used in higher amounts was previously unexpected. Further, the foams formed in accordance with the prior art references did not produce the claimed glass transition temperatures and tan delta peak.

It is requested that the Examiner reconsider the substance and depth of the Declaration and identify those portions that the Examiner contends are insufficient in order to allow the Applicant an opportunity to properly respond to the Examiner's rejection. Merely reciting the requirements for a Declaration, without more, does not permit the Applicant an opportunity to adequately document, on the record, more elaborate responses to the Examiner's rejection.

Appln. No.: 10/606,825
Reply to Office action of August 10, 2006

Accordingly, it is respectfully submitted that the Application, as amended, is now presented in condition for allowance, which allowance is respectfully solicited. Applicant believes that no fees are due, however, if any become required, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account 08-2789.

Respectfully submitted

HOWARD & HOWARD ATTORNEYS, P.C.

December 11, 2006
Date

/Kristopher K. Hulliberger/
Kristopher K. Hulliberger, Reg. No. 53,047
The Pinehurst Office Center, Suite #101
39400 Woodward Avenue
Bloomfield Hills, Michigan 48304
(248) 723-0453